

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

KORY DAMONT WILSON

CIVIL ACTION NO. 3:16-CV-1321

VS.

SECTION P

JUDGE ROBERT G. JAMES

**CALDWELL CORRECTIONAL
CENTER, ET AL**

MAGISTRATE JUDGE KAREN L. HAYES

REPORT AND RECOMMENDATION

Pro se plaintiff Kory Damont Wilson, proceeding in forma pauperis, filed the instant civil rights complaint pursuant to 42 U.S.C. §1983 on September 19, 2016. Plaintiff is a pre-trial detainee, currently incarcerated at the Evangeline Parish Jail; his complaints arise out of his time of incarceration at the Caldwell Correctional Center (CCC), Grayson, Louisiana. He complains of abuse of inmates by the corrections staff and of the conditions of his confinement. Plaintiff sued the CCC, Mr. (formerly Captain) Grant and Mr. (formerly Correctional Officer) Morton, seeking compensatory damages. This matter has been referred to the undersigned for review, report, and recommendation in accordance with the provisions of 28 U.S.C. §636 and the standing orders of the Court. For the following reasons it is recommended that the complaint be **DISMISSED WITH PREJUDICE** as frivolous and for failing to state a claim for which relief may be granted.

Statement of the Case

Plaintiff's complaint describes incidents in which he witnessed corrections staff used excessive force on other inmates in his dorm. He also complains of the inadequate grievance system, small portions fed to inmates some days and not always enjoying the timely receipt of mail. Finally, he asserts that the guards told the inmates in his dorm that the air conditioner was broken

during the summer, but during the winter it was turned on, “not just on, but blasting it. That at night time you would have to be under two blankets, your oranges, socks and a cap if you had one.” [Rec. Doc. 1-1]

Law and Analysis

1. Screening

Plaintiff is a prisoner who has been permitted to proceed *in forma pauperis*. As a prisoner seeking redress from an officer or employee of a governmental entity, his complaint is subject to preliminary screening pursuant to 28 U.S.C. § 1915A. *See Martin v. Scott*, 156 F.3d 578, 579-80 (5th Cir.1998) (per curiam). Because he is proceeding *in forma pauperis*, his complaint is also subject to screening under § 1915(e)(2). Both § 1915(e)(2) (B) and § 1915A(b) provide for *sua sponte* dismissal of the complaint, or any portion thereof, if the Court finds it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief against a defendant who is immune from such relief.

A complaint is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A claim lacks an arguable basis in law when it is “based on an indisputably meritless legal theory.” *Id.* at 327. A complaint fails to state a claim upon which relief may be granted when it fails to plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *accord Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

2. Grievance Procedure

Plaintiff complains that the defendants have denied him and his fellow inmates a right to fully participate in an adequate and effective prison grievance procedure. In *Sandin v. Conner*, 515

U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995), the Supreme Court left prisoners without a federally-protected right to have grievances investigated and resolved. Any right of that nature is grounded in state law or regulation and the mere failure of an official to follow state law or regulation, without more, does not violate constitutional *minima*. See *Taylor v. Cockrell*, 2004 WL 287339 at *1 (5th Cir. Feb.12, 2004) (not designated for publication) (holding that “claims that the defendants violated ... constitutional rights by failing to investigate ... grievances fall short of establishing a federal constitutional claim”); *Geiger v. Jowers*, 404 F.3d 371 (5th Cir. 2005) (Prisoners do not have a federally protected liberty interest in having their grievances resolved to their satisfaction; any alleged due process violation arising from the alleged failure to investigate prisoner grievances is indisputably meritless); (see also *Jones v. North Carolina Prisoners’ Labor Union, Inc.*, 433 U.S. 119, 138, 97 S.Ct. 2532, 53 L.Ed.2d 629 (1977) (Burger, C.J., concurring) (applauding the institution of grievance procedures by prisons but not suggesting that such procedures are constitutionally required); *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir.1996) (“[A] state’s inmate grievance procedures do not give rise to a liberty interest protected by the Due Process Clause.”); *Adams v. Rice*, 40 F.3d 72, 75 (4th Cir.1994) (“[T]he constitution creates no entitlement to grievance procedures or access to any such procedure voluntarily established by a state.”); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir.1993) (quotation omitted) (holding that a prison grievance procedure is not a substantive right and “does not give rise to a protected liberty interest requiring the procedural protections envisioned by the fourteenth amendment”); *Flick v. Alba*, 932 F.2d 728, 729 (8th Cir.1991 (*per curiam*) (concluding regulations providing for administrative remedy procedure do not create liberty interests in access to that procedure); and *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir.1988) (“There is no legitimate claim of entitlement to

a grievance procedure.”).

Since there is no constitutionally protected right to participate in a prison grievance procedure, plaintiff’s grievance claim is frivolous.

2. Excessive Force

Plaintiff also complains of instances where he believes excessive force was used by prison guards against his fellow inmates; however, he alleges no instances in which *he* was the victim of such force.

Plaintiff lacks standing to assert the general claim of excessive force with respect to inmates other than himself. To satisfy the standing requirement, a plaintiff must demonstrate: (1) an injury in fact; (2) that is traceable to the defendant's challenged conduct; and (3) that is likely to be redressed by a favorable decision of the district court. *Blackwell v. Madison Parish Correctional Center*, 2010 WL 147987 at *7 (W.D. La., Jan. 13, 2010) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). The injury must be “actual or imminent, not ‘conjectural or hypothetical.’” *Id.* With respect to the alleged excessive force against other inmates, plaintiff lacks standing to assert a claim.

2. Conditions of Confinement

Finally, plaintiff complains of the conditions of his confinement; specifically that inmates were made small portions, did not receive mail every day and were “tortured” by uncomfortable temperatures in the dorm. It has long been held that “... [t]he State’s exercise of its power to hold detainees and prisoners ... brings with it a responsibility under the U.S. Constitution to tend to the essentials of their well-being: when the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to

provide for his basic human needs ... it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.” *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 638-39 (5th Cir.1996) (*en banc*) (quoting *DeShaney v. Winnebago County Dep’t of Soc. Servs.*, 489 U.S. 189, 200, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989)).

Thus, a detainee’s constitutional rights arise from “both the procedural and substantive due process guarantees of the Fourteenth Amendment.” *Id.* at 639 (citing *Bell v. Wolfish*, 441 U.S. 520, 535, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979)). The Due Process Clause of the Fourteenth prohibits the punitive confinement of a pretrial detainee since, by definition, the guilt of a detainee has not yet been adjudicated. See *Bell*, 441 U.S. at 535. However, pursuant to 42 U.S.C. § 1997e, as amended by the Prison Litigation and Reform Act of 1996, prisoners are barred from recovering monetary damages for mental or emotional injuries “unless there is a prior showing of physical injury.” *Crawford-el v. Britton*, 523 U.S. 574, 596, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998). The “physical injury” required by § 1997e(e) must be more than *de minimis* but need not be significant. *Harper v. Showers*, 174 F.3d 716, 719 (5th Cir.1999) (citing *Siglar v. Hightower*, 112 F.3d 191 (5th Cir.1997)). Plaintiff has alleged no injury caused by the alleged conditions. Accordingly, he is barred from recovery and these claims should be dismissed.

Conclusion and Recommendation

Therefore,

IT IS RECOMMENDED THAT plaintiff’s civil rights complaint be **DISMISSED WITH PREJUDICE** as frivolous and for failing to state a claim for which relief may be granted.

Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation

to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy of any objections or response to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. *See, Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

In Chambers, Monroe, Louisiana, December 6, 2016.

A handwritten signature in black ink, appearing to read "Karen L. Hayes", is written over a horizontal line.

**KAREN L. HAYES
UNITED STATES MAGISTRATE JUDGE**